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Our system of law is founded on precedents. It often happens that those resemblances which call for the extension of old precedents to new facts and those differences of the new from the old which make necessary the qualification of a precedent or the development of a new doctrine are not easily perceived. Judicial decisions may thus result sometimes in unintended petrefaction of law, but, generally, there is no denying the fact that the law broadens from precedent to precedent. Where the resemblances and the differences are realised the law certainly undergoes extension or qualification. There is good sense in what, decades ago, a writer in the Green Bag observed apropos of precedents :

> " I wade through citations galore,
> Dissect and distinguish the same.
> But I find, ' mid defeat and vain fury.
> There never was yet to be found
> Precedent for a Judge or a jury ".

The truth is that it is not the principles themselves that change. It is the application of the principles to varying facts—the facts of no two cases being the same—that produces a sense of enlargement or restriction of such principles. During the year under review as many as 47 decisions of the Supreme Court have been reported in the columns of this Journal in addition to important decisions of the High Court in the several branches of the law. An attempt is made here to touch upon the decisions so rendered on some of the more important titles of the law.

THE ADVOCATE AND HIS DUTIES.

In *Dr. V. K. John* v. *Vasantha Pai*[1], it is pointed out that while an advocate, as a responsible officer of Court and member of a noble profession, will be guilty of grave misconduct if with knowledge of their falsehood he allows allegations to be made by his client in an affidavit, and he should therefore verify whether there were reasonable grounds in support of the allegations so made, it is not his province to judge nor is it incumbent on him to decide if the offending allegations were true ; and that it would be better for an advocate to advise his client not to use the language of positive assertion in such matters but to use words like "I suspect", "I believe," " I have reason to think ", or " I apprehend ".

THE HIGH COURT : ITS POWERS AND JURISDICTION.

In *Chauba Jagadish Prasad* v. *Ganga Prasad Chaturvedi*[2], the Supreme Court indicates that the power of the High Court to correct questions of jurisdiction is to be found within the four corners of section 115, Civil Procedure Code and that if there is error falling within the section the Court can interfere, not otherwise. In

1. (1959) 1 M.L.J. 329 (F.B.). 2. (1959) 1 M.L.J. (S.C.) 171.

State of Madhya Pradesh v. *Rava Shankar*[1], the Supreme Court lays down that the High Court has the right to protect subordinate Courts against contempt but subject to the restriction that a case of contempt provided for in the Indian Penal Code should not be taken cognisance of by the High Court, and that where in its true nature and effect the act complained of is really scandalising the Court rather than a mere personal insult to the Magistrate which is an offence under section 228, Indian Penal Code, the jurisdiction of the High Court to take contempt proceedings is not ousted by section 3 (2) of the Contempt of Courts Act, 1952.

CONSTITUTIONAL LAW.

The decision of the Supreme Court in *Dalmia* v. *Justice Tendolkar*[2], makes it clear that a statute coming up for consideration on a question of its validity under Article 14 of the Constitution may have to be dealt with under one or other of five classes, namely, (1) where the statute itself indicates the persons or things to whom its provisions may apply either on the face of it or to be gathered from the surrounding circumstances known to or brought to the notice of the Court, the Court will examine whether the classification can be deemed to rest upon differentia distinguishing the persons or things grouped from those left out and whether such differentia has a reasonable relation to the object sought to be achieved irrespective of whether the statute is intended to apply to a particular person or thing or to a certain class of persons or things ; (2) where the statute directs its provisions against an individual person or thing or to several individual persons or things but no reasonable basis of classification appears on the face of it or can be deduced from the surrounding circumstances the Court will strike down the law as a case of naked discrimination ; (3) where the statute makes no classification for applying its provisions but leaves it to the discretion of the Government to select and classify the Court will not strike down the law out of hand but will examine and ascertain if the statute has laid down any principle or policy for guiding the exercise of discretion by Government in the matter of selection and classification, and if no such principle or policy is found the statute will be struck down as providing for the delegation of arbitrary or uncontrolled power to the Government so as to enable it to discriminate between persons and things similarly situate as well as any executive action taken under such law ; (4) where the statute has made no classification and leaves it to the discretion of the Government to select and classify the persons or things to whom the provisions are to apply, but at the same time it lays down a principle or policy for guiding the exercise of the discretion, the Court will uphold the law as constitutional ; (5) where the statute leaves it to the discretion of the Government to select and classify the persons or things to whom the provisions shall apply and also indicates the principle or policy to guide the exercise of the discretion, but the Government has not followed such principle or policy the action of the Government will be struck down, but the statute itself will not be condemned as unconstitutional. The Supreme Court further lays down that on the principles thus set out the Commissions of Inquiry Act, 1952, had not delegated any arbitrary or uncontrolled power to Government and was not bad, and that the notification issued by the Government in pursuance thereof with some words deleted therefrom will be perfectly valid and competent. *Achuthan* v. *State of Kerala*[3] decides that it is perfectly open to the Government even as it is to a private party to choose a person to their liking to fulfil contracts which they wish to be performed, and when one person is chosen rather than another there is no discrimination and the aggrieved party cannot claim the protection of Article 14. *Lakshmi Ammal* v. *Ramaswami Naicker*[4] holds that the provision of a cheap and summary remedy for the spouses to get an annulment of their marriage under section 11 of the Hindu Marriages Act, 1955, is not an illegal discrimination but a proper classification under Article 14 of the Constitution. *Hajee Mohammad Yusuf Sahib* v. *State of Madras*[5] lays down that a notification by Government fixing the minimum wage for piece-workers in tanneries

1. (1959) 1 M.L.J. (S.C.) 84.
2. (1959) 1 M.L.J. (S.C.) 67.
3. (1959) 1 M.L.J. (S.C.) 164.
4. (1959) 1 M.L.J. 333.
5. (1959) 2 M.L.J. 132.

for the State as a whole while in fact Government had been empowered by the Minimum Wages Act to fix the wage for the State or for the locality will not be a contravention of Article 14 merely because for procuring the same outturn of tanned hides and skins the petitioner may have to pay more to his workers than tanners in other localities due to the quantum of the unit being less at that place than in other places. In *M. S. M. Sharma* v. *Sri Krishna Sinha*[1], the Supreme Court points out that even assuming that a citizen and editor of a newspaper has under Article 19(1) (*a*) the fundamental right to publish a true and faithful report of the debates and proceedings in the Legislatures the provisions of Article 19(1) (*a*) being general must yield to Article 194 (3), and that the Legislatures have privilege under the latter provision to prohibit the publication of such part of the proceedings which had been directed to be expunged. *Subramania Iyer* v. *Dharmalinga Padayachi*[2] holds that, since under Article 19 (1) (*f*) the right to hold and dispose of property is subject to the power of the State to impose reasonable restrictions in the public interest, the denial to landowners of the right to evict tenants for a period of three or four years resulting from the Madras Cultivating Tenants Protection Act and the Madras Cultivating Tenants (Payment of Fair Rent) Act is not an unreasonable restriction of their rights. *Sajjan Bank* v. *Reserve Bank*[3] declares that section 22 of the Banking Companies Act, 1949, introducing a complete system of licensing of banks by the Reserve Bank is not unconstitutional and is in no way opposed to the fundamental right of a citizen to carry on banking business under Article 19 (1) (*g*). In *Nathella Sampathu Chetty* v. *Collector of Customs*[4], it is held that section 178-A of the Sea Customs Act introduced in 1955 imposing a statutory burden on a person in possession of gold is void under Article 13 as it offends against the fundamental right guaranteed under Article 19 (1) (*f*) or (*g*) and is not saved by clause (5) or clause (6) of that Article. *Nageswara Rao* v. *Andhra Pradesh State Road Transport Corporation*[5] points out that, though the right to carry on business in transport vehicles on public pathways is certainly one of the fundamental rights recognised under Article 19, the State is competent to make a law placing reasonable restrictions on the right of a citizen to do business or to create a monopoly or to make a law empowering the State to carry on business to the exclusion of a citizen. In *Achuthan* v. *State of Kerala*[6], the Supreme Court makes it clear that a contract which is held from Government stands on no different footing from a contract held from a private party, and that the breach of such contract may entitle the aggrieved party to sue for damages or in appropriate cases even for specific performance, but he cannot complain that there has been a deprivation of the right to practise any profession or to carry on any occupation as is contemplated in Article 19 (1) (*g*). In *Arunachala Nadar* v. *State of Madras*[7], the Supreme Court decides that the Madras Commercial Crops Markets Act being conceived and enacted to regulate the buying and selling of commercial crops by providing suitable and regulated markets by eliminating the middleman and bringing face to face the producer and the buyer so that they may meet on equal terms reducing the scope for exploitation in dealings cannot be said to impose unreasonable restrictions on the citizen's right to do business in the absence of proof that the provisions are too drastic and unnecessarily harsh and overreach the scope and object to achieve which it was enacted. In *Nageswara Rao* v. *Andhra Pradesh State Road Transport Corporation*[5], the Supreme Court holds apropos of Article 31 that unless the impugned law depriving any person of property provides for the transfer of the ownership or the right to the possession of the property to the State the law does not relate to " acquisition " or " requisition " of property so as to attract the limitations placed under clause (2) of the Article on the Legislature, and that Chapter IV-A of the Motor Vehicles Act, 1939, inserted in that Act in 1956 enabling the Transport Authority to cancel a permit operated under the unamended Act and give it to another person does not amount to providing for the transfer of ownership or the right to possession of any property to the State Corporation or to a Corporation

1. (1959) 2 M.L.J. (S.C.) 125.
2. (1959) 1 M.L.J. 1.
3. (1959) 2 M.L.J. 455.
4. (1959) 2 M.L.J. 35.
5. (1959) 2 M.L.J. (S.C.) 156.
6. (1959) 1 M.L.J. (S.C.) 164.
7. (1959) 1 M.L.J. (S.C.) 133.

owned and controlled by the State. *Namasivaya Mudaliar* v. *State of Madras*[1] makes it clear that the Courts can examine whether what is called " compensation " is really so and whether what are claimed to be principles on which compensation is to be computed are really so within the meaning of Article 31 (2), that the provision in the Madras Lignite (Acquisition of Land) Act, 1953, that no compensation need be provided for improvements made after a certain date if they are agricultural improvements is really in the nature of a device to refuse compensation and is therefore unconstitutional, that where a legislation provides as does the Madras Act XI of 1953 that compensation after a particular date shall be paid only in respect of certain improvements done and not for others and fixes the quantum of compensation without any basis or principle without taking into account valuable accretions to the property and which fixes dates for the purpose of ascertaining the compensation which are not appropriate to the matter it would come particularly close to fraudulent exercise of power. In *Ram Ram Narayan Medhi* v. *State of Bombay*[2] the Supreme Court holds that lands held by 'landholders' within the definition of that term in the Bombay Tenancy Agricultural Lands (Amendment) Act, 1956, are "estates" within the meaning of Article 31-A, that the term ' estate ' meant any interest in land and was not confined to the holdings of the holders of alienated lands, and that the words 'extinguishment or modification of any such rights' in the Article must be understood in their plain grammatical sense, and that there was no scope for imposing limitations like "in the process of such acquisition by the State of any estate or of any right therein". In *Kochunni* v. *State of Madras*[3], the Supreme Court lays down that (i) the right to move the Supreme Court under Article 32 for the enforcement of the fundamental rights is itself a guaranteed right, (ii) the mere existence of an adequate alternative remedy is not a good and sufficient ground to throw out a petition under Article 32 if the existence of a fundamental right and a breach, actual or threatened, of such right is alleged and *prima facie* established in the petition, (iii) it is possible that an enactment may immediately on its coming into force take away or abridge the fundamental right of a person by its very terms without any further overt act being done, and in such a case the person prejudicially affected will be entitled to the remedy afforded by Article 32, (iv) the powers of the Supreme Court are wide enough to make a declaratory order where that is the proper relief to be given to an aggrieved party, and (v) the Supreme Court will not decline to entertain a petition under Article 32 on the ground that it involves the determination of disputed questions of fact. *Sathappa Chettiar* v. *Umayal Achi*[4] holds that for the purpose of Article 133 (1) the High Court on the Original Side presided over by a single Judge is the Court immediately below the High Court on the Appellate Side and that where a compromise entered into by a Hindu father was binding on his son there is no 'substantial question of law' within the meaning of that Article. *Nijam Mohideen*, In re[5], decides that an order on a bail application whether granting or refusing bail is not a final order falling within Article 134 (1) (*c*) since it decides no issue between the parties and does not result either in conviction or acquittal, and hence an application for the grant of a certificate to appeal to the Supreme Court from such order will be incompetent. *M. S. M. Sharma* v. *Sri Krishna Sinha*[6] takes the view that the Houses of the Legislatures in India have the privilege under Article 194(3) to prohibit the publication of such part of the proceedings as had been directed to be expunged. In *Gabriel* v. *State of Madras*[7], it is pointed out that the true scope of the writ of *certiorari* is to merely demolish an offending order and it is not necessary that the offender should be present before the Court to render the determination effective. *Nathella Sampathu Chetty* v. *Collector of Customs*[8] takes the view that the decision arrived at by a Customs Officer in proceedings to impose the prescribed penalties under the Sea Customs Act is quasi-judicial in its scope and as such liable to correction by the issue of a writ of *certiorari*. *Raman and Raman* v. *State of Madras*[9] points out that the orders issued by the State Government under section 43-A of

1. (1959) 2 M.L.J. 402.
2. (1959) 2 M.L.J. (S.C.) 1.
3. (1959) 2 M.L.J. (S.C.) 70.
4. (1959) 2 M.L.J. 300.
5. (1959) 2 M.L.J. 541.
6. (1959) 2 M.L.J. (S.C.) 125.
7. (1959) 2 M.L.J. 15.
8. (1959) 2 M.L.J. 35.
9. (1959) 2 M.L.J. (S.C.) 236.

the Motor Vehicles Act are administrative in character, that it is not improper for the Appellate Board to decide the matter in the light of a Government Order brought into force after the date of the decision of the Regional Transport Authority issuing the permit, and hence no writ of *certiorari* can be issued. In *Veluswami Thevar* v. *Raja Nainar*[1], the Supreme Court holds that though the jurisdiction of the High Courts to issue writs against the orders of the Tribunal is undoubted, yet, it is well settled that where there is another remedy provided, the High Court may properly exercise its discretion in declining to interfere under Article 226. *Rainbow Dyeing Factory* v. *Industrial Tribunal*[2] lays down that several persons who are aggrieved by the order of a Tribunal cannot join together as petitioners in a common single writ petition to quash that order under Article 226 even though the grievance of all the persons and the remedies sought for may be similar, when once it is clear that their interests in the subject-matter of the controversy are different and distinct. *Issardas Somanlal Lulla* v. *Collector of Madras*[3] points out that though *certiorari* is not a writ of course it will be issued in proper cases *ex debito justitiae*, that where a member of the public moves for the writ it is purely in the discretion of the Court, but where a party aggrieved by an order of an inferior Tribunal moves the Court the Court is bound to issue the writ unless the party has by his conduct disqualified himself, that, where an inferior Tribunal exceeds its jurisdiction, apart from the question of the subsistence of any right, a party to the proceedings before the Tribunal will be entitled to apply for the writ of *certiorari*, and that where the petitioner applied under Article 226 to quash the order of the Collector purporting to cancel an import quota right allowed to him, even though the question whether the person ever acquired such a right was in dispute, he could still be entitled to invoke the Court's jurisdiction under Article 226 if he has been a party to the proceedings before the Collector. *Deptylal* v. *Collector of Nilgiris*[4] lays down that a party invoking the Court's jurisdiction under Article 226 is bound to make a full and true disclosure of all the relevant facts and that where he is found to have suppressed material facts relevant to the issue involved and made misleading allegations he is disentitled to any relief on that ground alone. In *Saradambal Ammal* v. *Chief Controlling Revenue Authority*[5], it is held that in an application for a *mandamus* to direct a reference under section 57(1) of the Stamp Act the pendency of the case before the Revenue Authority is not of much importance, and that while the Revenue Authority may not have the power to make a reference when the matter is not pending before it the High Court can under Article 226 direct the Revenue Authority to refer a case under section 57 of the Stamp Act after the Revenue Authority has decided the matter finally. *Lipton Employees Union* v. *Management of Lipton Ltd.*[6] takes the view that it is a revisional jurisdiction that is exercised under Article 227 by the High Court, that in the exercise of such jurisdiction the High Court does not convert itself into a Court of Appeal, that the findings of an Industrial Tribunal on questions of fact are not open to review in proceedings under Article 227, and that the scope for interference with the Tribunal's findings of fact is very little different from that in deciding whether a writ of *certiorari* should issue under Article 226. In *Dalmia* v. *Justice Tendolkar*[7], it is held by the Supreme Court that the very use of the words "with respect to" in Article 246 supports the principle of liberal construction of the legislative heads so as to give power to the Legislature not only to legislate with respect to the particular legislative topic but also with respect to all matters ancillary thereto, that under Article 246 read with Entry 94 in List I and Entry 45 in List III of the Seventh Schedule Parliament as well as the Legislature of a State may make a law with respect to inquiries for the purpose of any of the matters in List II but that Parliament cannot however make a law with respect to any of the matters enumerated in List II. In *Subramania Iyer* v. *Dharmalinga Padayachi*[8], it is held that the power to regulate the relations of landlords and tenants is granted to the Legislature under Entry 18 of List II of the Seventh Schedule in addition to the power granted

1. (1959) 2 M.L.J. (S.C.) 48.
2. (1959) 1 M.L.J. 53.
3. (1959) 2 M.L.J. 136.
4. (1959) 2 M.L.J. 208.
5. (1959) 2 M.L.J. 339.
6. (1959) 1 M.L.J. 235.
7. (1959) 1 M.L.J. (S.C.) 67.
8. (1959) 1 M.L.J. 1 (F.B.).

to the Legislature to make laws with respect to contracts and transfer of property concerning agricultural land, that the Legislature is therefore competent to modify and introduce obligatory terms in contracts of leases of agricultural land, that the term "tenant" in Entry 18 includes an ex-tenant, and the fact that the Madras Cultivating Tenants Protection Act and the Madras Cultivating Tenants (Payment of Fair Rent) Act conferred rights on persons let into possession on tenancy agreements but who continue after the expiry of the terms of their tenancy would not take the Acts, beyond the scope of Article 246 (3) and Entry 18 of List II of the Seventh Schedule. *Rayalaseema Constructions* v. *Deputy Commercial Tax-Officer*[1], lays down that the words "levy" and "collection" in Article 265 are used in a comprehensive sense including and enveloping the entire process of taxation commencing from the taxing statute to the taking away of money from the pocket of the citizen, and that under the Article the entire process must be authorised by law. In *Hukum Chand Malhotra* v. *Union of India*[2], the Supreme Court points out that under Article 311 (2) there is nothing wrong in the punishing authority tentatively forming the opinion that the charges proved merit any one of the three major penalties—dismissal removal, or reduction—and on that footing asking the Government servant concerned to show cause against the action proposed to be taken in the alternative in regard to him, and that it gives the Government servant concerned a better opportunity to show cause against each of these punishments being inflicted on him which he would not have had if only the severest punishment mentioned and a lesser punishment not mentioned in the notice had been inflicted on him. *Sambandan* v. *Regional Traffic Superintendent*[3] holds that the mere mention of a particular punishment in Article 311 (2) could not vest a legal right in a civil servant to a particular rank.

Representation of the People Act.

In *Bhagwan Singh* v. *Rameshwar Prasad Shastri*[4], the Supreme Court points out that where the nomination of a person is challenged on the ground that it is hit by section 7(*d*) of the Representation of the People Act, 1951, by reason of his having an interest in a contract for the execution of works undertaken by the Government, the invalidity of the contract would not affect the merits of the issue raised that the contract had been executed not in his personal capacity but as the mukhiya of the village panchayat. *Parthasarathy* v. *Nataraja Odayar*[5] decides that a defect which will warrant the rejection of a nomination paper under section 36 (4) must be of a substantial character, and the omission of a candidate to specify in the declaration that he is an Adi Dravida mentioning merely that he was a Harijan as required by section 33 (2) is only a technical defect and not of a substantial character so as to vitiate his nomination paper or justify its rejection, and that his election cannot be challenged on the ground of improper acceptance of his nomination paper. *Narasimham* v. *Natesa Chettiar*[6] takes the view that the mere omission to enter an expenditure in contravention of sub-sections (1) and (2) of section 77 would not be a corrupt practice within the meaning of section 123 (6), and that it is only the spending of more than the prescribed amount that would amount to corrupt practice. In *Veluswami Thevar* v. *Raja Nainar*[7], the Supreme Court lays down that in the context of section 100 (1) (*c*) and (*d*) the improper rejection or acceptance must have reference to section 36 (2) that the rejection of the nomination paper of a person qualified to be chosen by election who does not suffer from the disqualifications mentioned in section 36 (2) would be improper, that under section 100 an inquiry before the Election Tribunal must embrace all the matters as to qualification and disqualification mentioned in section 36 (2) and cannot be confined to the particular ground taken before the Returning Officer or relied on by him, that the proceedings under the section are in the nature of original proceedings and not by way of appeal against the decision of the Returning Officer, and that since an appeal is

1. (1959) 2 M.L.J. 97.
2. (1959) 1 M.L.J. (S.C.) 148.
3. (1959) 1 M.L.J. 359.
4. (1959) 2 M.L.J. (S.C.) 111.
5. (1959) 1 M.L.J. 111.
6. (1959) 2 M.L.J. 396.
7. (1959) 2 M.L.J. (S.C.) 48.

provided in section 116-A to the High Court from the Tribunal the intention is obviously that the proceedings before the Tribunal should go on expeditiously and without interruption and that any error in its decision should be set right in an appeal under that section. In *Ram Dial* v. *Sant Lal*[1], the Supreme Court makes it clear that if a religious leader had said that he preferred a particular candidate as in his opinion more worthy of the confidence of the electors than another, to persons who were amenable to his influence he would be within his rights and his influence however great could not be said to have been misused ; but, where the religious leader had practically left no free choice to (his followers) the electors not only by issuing a hukum or farman but also by his speeches to the effect that they must vote for a particular candidate implying that disobedience of his mandate would carry divine censure the case would fall within the purview of the second para. of the proviso to section 123 (2).

INDUSTRIAL DISPUTES ACT.

In *Kammawar Achukudam* v. *Industrial Tribunal*[2], it is laid down that an Industrial Tribunal being a creature of statute has only those powers that are conferred by the statute expressly or by necessary implication and as such will have no inherent powers like a civil Court, that an Industrial Tribunal becomes *functus officio* when once it makes its award in any dispute and has no power of review over its orders, and that an Industrial Tribunal cannot have any jurisdiction to interpret or clarify an award made by it afterwards. *Coimbatore Cotton Mills* v. *Industrial Tribunal*[3] holds that the maintenance of discipline in an establishment is on the management and it is not for an Industrial Tribunal to say what should be the quantum of punishment to be awarded. *Working Journalists of Tamil Nad* v. *Management*[4] takes the view that the second and third schedules of the Industrial Disputes Act cannot be construed as defining the powers of the Labour Courts or the Industrial Tribunal to the grant of particular reliefs, and that if a dispute regarding the termination of employment is a matter falling within the jurisdiction of the Labour Courts there is no restriction in the Act as to the relief that could be granted to the workman in case the Court holds the termination to be wrongful. In *Buckingham and Carnatic Co.* v. *B. & C. Mills Staff Union*[5], it is held that despite the wide definition of an industrial dispute it is now well established that only collective disputes will fall within the scope of the Act, that even an individual dispute can become an industrial dispute if taken up by a union of workers or by a number of workers, that in an establishment employing a large number of workmen having defined work and falling into several groups an industrial dispute can arise between the management and a particular group of workmen, and it cannot be said that in such a case a majority of the total employees in the establishment should take up the cause and that the entire establishment should be treated as one unit to decide whether the dispute raised by the workmen in one unit has the backing of a majority or not. *Ahmed Hussain and Sons* v. *United Beedi Workers Union*[6] decides that where a firm of beedi manufacturers contracted with an intermediary under which the firm was to supply him the necessary tobacco and beedi leaves for the purpose of being rolled and delivered at a stipulated price less the cost of the materials supplied the relationship between the firm and the intermediary is not that of master and servant, that there is no privity of contract between the firm and the workmen employed by the intermediary, and that the disputes between the firm and the workman cannot be industrial disputes. In *State of Bihar* v. *D. N. Ganguly*[7], the Supreme Court points out that the scheme of the provisions in Chapters III and IV of the Industrial Disputes Act appears to be to leave the reference proceedings exclusively within the jurisdiction of the Tribunals constituted under the Act and to make their awards binding on the parties subject to the special powers conferred on the appropriate Government under sections 17-A and 19, that it is only when the Government makes an order

1. (1959) 2 M.L.J. (S.C.) 99.
2. (1959) 1 M.L.J. 283.
3. (1959) 1 M.L.J. 254.
4. (1959) 2 M.L.J. 318.
5. (1959) 2 M.L.J. 516.
6. (1959) 1 M.L.J. 65.
7. (1959) 1 M.L.J. (S.C.) 178.

in writing referring an industrial dispute to the adjudication of the Tribunal that the proceedings can commence, but that the scheme of the provisions is inconsistent with any power in the appropriate Government to cancel a reference under section 10 (1). *Papanasam Labour Union* v. *State of Madras*[1] decides that the word 'may' in section 10 giving discretion to the Government to make a reference for adjudication cannot be construed as equivalent with 'shall' that, where the requirements of section 22(4) of the Act as to the notice of strike are not complied with, the proviso to section 10 (1) is inapplicable, and that whether section 12 (5) or section 10 (1) applies the Government has a discretion to refer some items mentioned in the strike notice alone and decline to refer the others where each of these items of disputes constitutes a separate industrial dispute. *Management of the 'Hindu'* v. *Working Journalists*[2] holds that though a dispute may be an industrial dispute on the date of reference to the Labour Court for adjudication it may lose such character on a latter date, that when an individual dispute supported by a majority of the workers was referred to the Labour Court for adjudication under section 10 but later on a majority of the workers withdraw their support the dispute will lose its character as an industrial dispute, that the Industrial Tribunal or the Labour Court as it may be will thereupon lose its jurisdiction under section 11 when once the dispute ceases to be an industrial dispute, and that the Labour Court like any other Court must take notice of facts which have happened after the institution of the proceedings and cannot pass futile or unrealistic orders. *Employees of Caltex* v. *Commissioner of Labour*[3] makes it clear that section 12 prescribes the procedure and time within which the Conciliation Officer under the Act could report a settlement arrived at in the course of the conciliation proceedings, that where the officer reports failure and the matter is thereafter dealt with by the Government or the Minister it is not a conciliation proceeding under the section and that a Conciliation Officer acting under section 12 is not acting in a judicial or quasi-judicial capacity though he hears the parties inasmuch as he is not competent to decide the issues, and hence his orders are not subject to correction by the High Court under Article 226 of the Constitution. In *Management of Ranipur Colliery* v. *Bhuban Singh*[4], the Supreme Court points out that section 33 imposes a ban on the employer to dismiss a workman during the pendency of a dispute between him and the employer and gives power to the Industrial Tribunal on application made to it to grant or withhold permission to dismiss, and that the proceedings under section 33 are not in the nature of an inquiry by the Tribunal into the conduct of the employee but only a method of satisfying itself whether a fair inquiry has been made by the employer in which he came to a conclusion *bona fide* that the employee was guilty of misconduct. *South Arcot Electricity Distribution Co.* v. *Elumalai*[5] expresses the view that before section 33 (1) can take effect the money claimed by the workman must be due, that is, 'payable' which can be only when it is ascertained ; hence sub-section (2) refers to a stage anterior to that provided in sub-section (1); that while sub-section (2) provides for the determination of the amount sub-section (1) provides for the collection of the amount so determined ; that a Labour Court has no jurisdiction to entertain a petition by the workman to determine the compensation or amount due to him and that what is excluded from the scope of sub-section (2) is 'benefits' which cannot be computed in terms of money.

COMPANY LAW.

In *Asoka Tea Estate* v. *Registrar of Joint Stock Companies*[6], it is pointed out that though under section 10 of the Companies Act, 1956, jurisdiction as regards company matters generally is had by the High Court only yet since under the former Companies Act the District Court had been given jurisdiction in certain matters by a Government Notification of 20th February, 1947, such Notification will be deemed to continue in force even under the new Companies Act by virtue of section 24 of the General Clauses Act till it is superseded, and hence District Courts will have juris-

1. (1959) 2 M.L.J. 69.
2. (1959) 2 M.L.J. 272.
3. (1959) 2 M.L.J. 173.
4. (1959) 2 M.L.J. (S.C.) 232.
5. (1959) 2 M.L.J. 545.
6. (1959) 1 M.L.J. 262.

entertain applications under section 75 (4) of the Companies Act, 1956, corresponding to section 104 of the earlier Act. *Thyagarajan* v. *Official Liquidator*[1] decides that section 125 of the Companies Act, 1956, renders unregistered charges created by the company void as against the liquidator and the creditors of the company though it may not be void for all purposes and would be binding on the company so long as it is a going concern, that section 127 deals with cases where a company acquires property subject to an unregistered charge, that there is no provision in the Act rendering the charge not binding on the liquidators or the creditors of the purchasing company, and that the term 'created' in section 125 (1) cannot in the context be given an extended meaning so as to include 'accepted' which is dealt with in section 127. *Perumalswami Naicken* v. *Srinivasa Iyer*[2], holds that all moneys will not constitute a book debt, and accordingly a suit by a purchaser of book debts after a company has been ordered to be wound up for unpaid share money will not lie. In *Sailendra Nath Sinha* v. *Jasoda Dual Adhikary*[3], the Supreme Court lays down that under section 179 no sanction is required for a liquidator for commencing a prosecution, that under section 237 (1) the Court may direct the liquidator himself to prosecute the offender or refer the matter to the Registrar, that though under sub-section (6) the Registrar is required to give the offender an opportunity to show cause before undertaking a prosecution it does not mean that sub-section (1) requires the Judge to give such opportunity to show cause before given directions to the liquidator to prosecute or refer to the Registrar, that sub-section (4) no doubt requires the previous sanction of the Court before the liquidator prosecutes the offender by himself but that provision relates to voluntary liquidation and no such provision is carried by section 237 (1) in the case of compulsory liquidation.

CONTRACTS.

In *Patel Brothers* v. *Vadilal Kashidas, Ltd.*[4] it is held that ouster of jurisdiction of a Court to which a person is entitled to resort under the Civil Procedure Code or any other statute cannot be a matter of presumption but should be proved by express words of the contract or at least by necessary implication, that merely because a contract contained a printed clause that the transaction is subject to Bombay jurisdiction it cannot be implied that the jurisdiction of other Courts is ousted within the meaning of section 28 of the Contract Act, and that such a clause cannot amount to a contract between the parties agreeing to have Bombay as the venue for settling all disputes. *Gherulal Parak* v. *Mahadeodas Maiya*[5], is an important pronouncement of the Supreme Court on wagering contracts. It lays down that the Common Law of England and of India have not struck down wagering contracts as illegal on the ground of public policy, that they have not been considered to be illegal despite the statutes declaring them to be void, that collateral contracts were being enforced in England till the passing of the Gaming Act of 1892 and in India all the time except in Bombay, that the moral prohibitions of Hindu law texts against gambling were not legally enforced but were allowed to fall into desuetude, that there is no head of public policy that would directly apply to wagering contracts, that the concept of immorality is confined to sexual immorality and Courts cannot evolve a new head so as to bring in wagers within its fold, that though under section 30 of the Contract Act a wager is void and unenforceable it is not forbidden by law and therefore the object of a collateral agreement cannot be regarded as unlawful under section 23, and that a partnership will not hence be unlawful even if its object is to carry on wagering transactions. In *Sales Tax Officer* v. *Kanhaiyalal*[6], the Supreme Court points out that there is no warrant for ascribing any limited meaning to the term 'mistake' in section 72, that the word is wide enough to cover not only a mistake of fact but also a mistake of law, that there is no conflict between sections 72, 21 and 22, that the true principle is that if one party pays under mistake to another party a sum of money that is not due by contract or otherwise that money must be repaid, and that no distinction can be made in regard to the application of the principle between a tax liability and any other lia-

1. (1959) 2 M.L.J. 294.
2. (1959) 1 M.L.J. 305.
3. (1959) 1 M.L.J. (S.C.) 127.
4. (1959) 1 M.L.J. 106.
5. (1959) 2 M.L.J. (S.C.) 81.
6. (1959) 1 M.L.J. (S.C.) 35.

bility. *Standard Printing Machinery* v. *Proprietors, Bharathi Press*[1] decides that a clause in a tradesman's bill charging interest at a certain rate does not amount to a contract to pay interest at that rate within the meaning of section 61 (2) of the Sale of Goods Act and the mere fact that in a suit for the price of goods sold and interest the buyer sets up a contract to pay interest which he is unable to prove will not disqualify him for relief under section 61 (2). *Mohammad Musa Sahib* v. *Mohammad Ghouse Sahib*[2] makes it clear that in the absence of a provision for the sharing of profits or for the element of agency there cannot be a partnership. In *Gavararaju Chetty* v. *Sitaramamurthy Chetty*[3], the Supreme Court expresses the view that there is no absolute rule of law or equity that a renewal of lease by one partner must necessarily enure for the benefit of all the partners, that there is no doubt a presumption of fact that it so enures, but such presumption is rebuttable and must depend on the facts and circumstances of each case. *Narayanan Chettiar* v. *Umayal Achi*[4], holds that the general rule that the death of a partner dissolves the partnership could apply only in the absence of a contract to the contrary between the parties, that if the intention was that the death of one partner was not to result in the dissolution of the firm such an agreement could be given effect to, but the application of the principle will be difficult where the firm is composed of only two partners, in which case, the partnership will come to an end with the death of one partner as there could be no partnership existing only with one person. *Mohammad Abduk Samad* v. *Madarsa Rowther*[5], lays down that the object of section 69 (1) and (2) of the Partnership Act is to compel a firm which is a going concern to get itself registered if it has to institute a suit or make a claim in Courts of law in the firm name, that the word 'firm' in the section is used in contradistinction to the term 'dissolved firm' and that neither of the sub-sections could apply to a suit by a person claiming to have been a partner in a dissolved firm or to a suit instituted by a dissolved firm. In *Vyrathammal* v. *Somasundaram Pillai*[6], it is held that in a suit for dissolution of a partnership and for accounts it is the duty of the plaintiff to add all the necessary parties as defendants, and the non-joinder of a necessary party—partner or his legal representative—to a partnership action would entail the dismissal of the entire suit.

PROPERTY LAW.

In *Serandaya Pillai* v. *Sankaralingam Pillai*[7], it is held that a transaction of agreement to settle property in consideration of marriage followed by delivery of possession of the property on the marriage taking place falls within the scope of section 9 of the Transfer of Property Act and does not require either writing or registration. *Subramania Iyer* v. *Ramaswami Pillai*[8] decides that where during the pendency of a partition suit a sharer created a usufructuary mortgage over his share in a house and later on the suit was decreed and the house was purchased by the other sharer in a sale under the Partition Act the purchaser has to deposit in Court the value of the share purchased by him, and the mortgagee will be entitled to a prior charge over the amount as against other creditors, that section 52 has no application to the case and the purchaser cannot set-off the costs decreed to him in the partition suit against the amount of the purchase money liable to be deposited by him in Court. *Annamalai Goundan* v. *Venkataswami Naidu*[9], takes the view that where after the expiry of the lease priod a registered agreement was entered into between the parties whereby the leased properties were to be sold to the lessee who was allowed to remain in possession, and there was a tender of the consideration which however was refused, and no sale deed was executed, the conditions laid down in section 53-A are to be regarded as fulfilled though a contract to sell alone had been obtained, and it is not open to the landlord to contend that the right of possession claimed by the vendee was referable to the contract of lease. *Chinniah Goundan* v. *Subramania Chettiar*[10] lays down that a sub-mortgagee may at his choice limit his suit to the sub-mortgagor and ask for the sale of his interest in default of the payment of the decretal amount, or, he may join

1. (1959) 1 M.L.J. 167.
2. (1959) 2 M.L.J. 424.
3. (1959) 1 M.L.J. (S.C.) 188.
4. (1959) 1 M.L.J. 282.
5. (1959) 1 M.L.J. 309.
6. (1959) 2 M.L.J. 429.
7. (1959) 2 M.L.J. 502.
8. (1959) 1 M.L.J. 178.
9. (1959) 1 M.L.J. 301.
10. (1959) 1 M.L.J. 228 (F.B.).

the original mortgagor and ask for a decree for the sale of the mortgaged property in default of payment, that the two remedies are distinct and exclusive, the first being based on the covenant and the second on a derivative title to the mortgage right, that if he elects one of the two remedies and obtains a decree the cause of action on the mortgage would be merged in the judgment and it would not be open to him to revive it for relief on the basis of his alternative remedy. In *Mahant Ramdhan Puri* v. *Bankey Bihari Saran*[1], the Supreme Court points out that the only guiding rule on the question whether a transaction is a lease or a mortgage is that the intention of the parties must be looked into and gathered from the terms of the document, that when once a debt is found with security of land for its redemption the arrangement is a mortgage, that section 76 (*g*) and (*h*) imposed a liability on a mortgagee to keep full and accurate accounts supported by vouchers and to debit the receipts from the mortgaged property in reduction of the interest due and if there is a surplus left to pay it over to the mortgagor, that section 77 provides an exception to such liability to account if there is a contract between the parties that the receipts are to be taken in lieu of interest so long as the mortgagee was in possession of the property, and that where the mortgagee had undertaken to pay a specified sum to the mortgagor and was to appropriate the entire receipts or income to the interest it would amount to a contract between the mortgagor and the mortgagee within the meaning of section 77 and the mortgagee will not be liable to account for the receipts. *Meyappa Chettiar* v. *Murugappa and Sons*[2], holds that section 82 proceeds on the basic principle of the unity of the mortgage debt, that the principle of contribution comes into existence only with reference to the liability of the property which has borne the burden of more than one mortgage debt, that apart from the statutory provisions a claim for contribution can be founded on the principles of a common law burden shared by many people but discharged by one with the result that the remaining members enjoyed the benefit of the discharge, as in the case of co-sharers, co-tenants, partners, etc., and that the basis of contribution in all such cases is not only the common ownership of property but also a common liability which was discharged by one. *Velur Devasthanam* v. *Sundara Nainar*[3] decides that the lessee is liable to pay in accordance with the terms of the contract and there is no power in the Court to relieve him against the obligations under it on any equitable principles or to grant any remission.

MADRAS ESTATES LAND ACT AND THE MADRAS ESTATES (ABOLITION AND CONVERSION INTO RYOTWARI) ACT: In *State of Madras* v. *Rameswaram Devasthanam*[4] it is pointed out that the burden of proof that a certain land constituted an estate within the meaning of the Estates Land Act is clearly upon the party who so contends, and that 'estate' in section 3(2) (*d*) means a whole village granted in inam and nothing less than a village however big a part it may be of the whole village. *Karumuthu Thiagarajan Chettiar* v. *State of Madras*[5], holds that the confirmation under the Inams Register of only half the grant and not of the whole of the grant in the name of the successors of the original grantee will not make the suit village an estate under the Act. *Sivagurunathaswami Devasthanam* v. *Rathina*[6], decides that padugai lands, that is, lands on the lower level bank of the river between the edge of the sandy stream bed and the high flood level bank and formed when the silt gets deposited adjacent to the high flood level bank are mere accretions to the bund of the river and are not ryoti lands within the meaning of section 3 (16) and the tenant would have no occupancy right in such lands except where he has acquired such rights by reason of custom, grant, or prescription. *Govindarajulu Naidu* v. *State of Madras*[7], expresses the view that mere non-production of the inam title deed will not disprove the fact of the lands being a whole inam village when it is shown to be such by other overwhelming evidence; nor the fact that a minor inam measuring about 2 acres was included in that village and was proved to exist and was covered by a title deed; and that the circumstance of the owner of the village having got it registered in the Collector's Register

1. (1959) 1 M.L.J. (S.C.) 53.
2. (1959) 2 M.L.J. 505.
3. (1959) 1 M.L.J. 224.
4. (1959) 2 M.L.J. 383.
5. (1959) 1 M.L.J. 176.
6. (1959) 1 M.L.J. 114.
7. (1959) 1 M.L.J. 323.

as a zemindari village and was paying peshkush for it will not destroy the real character of the property as an inam village or estop the owner from contending that it was an inam village. In *Rangaraja Iyengar* v. *Achikannu Ammal*[1], it is pointed out that for a land to be regarded as house site under the Madras Land Encroachment Act it is not necessary that there should be a residential building constructed and standing on the land, that lands within the limits of the *gramanatham* should be regarded as house sites, that the provisions as to the vesting of lands under section 3 (*b*) of the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948, should be so read as to be in conformance with the provisions regarding the applicability of the enactments relating to ryotwari areas, and therefore house sites in *gramanathams* could not stand vested in the Government under the provisions of section 3 (*b*). In *Lakshmipathy Naicker* v. *State of Madras*[2], it is pointed out that in an ordinary ryotwari village it is not possible to conceive of the grant of a ryotwari patta with regard to a tank, that as the object of the Estates Abolition Act is to convert the zemindari estate into ryotwari tenure the provisions of the Act should be understood in relation to that purpose, that the scheme of sections 11 to 15 of the Estates Abolition Act is that the right to a ryotwari patta in respect of the private lands of the landholder is a matter for adjudication by the Settlement Officer, and that the landholder has to make out his claim with reference to every field or survey number claimed by him, that an irrigation tank though constructed on what was once the landholder's private land cannot be held to be his private lands as would entitle him to the issue of a ryotwari patta under section 12, that if it is found on enquiry under section 15 that having regard to its size and the quantity of water it holds it is nothing more than a well or pond the landholder will be entitled to have it included in the patta of the land of which it is a part, and that if on the other hand the tank is found to be a source of irrigation for other lands the tank would be Government property and the landholder will not be entitled to a patta though the land on which it stands or the surrounding land may be the private land of the landholder to which he is entitled to a patta. *Pandian* v. *Board of Revenue*[3], makes it clear that the scheme of the Estates Abolition Act is such that it specifically provides for the determination of several disputed questions by the specified designated officers, that such of the disputes as are judicial or at least quasi-judicial must be settled by the specified authority and such authority will have no power to delegate its functions to any other, that section 18 (6) specifically vests the jurisdiction to decide certain disputes in the Government and such functions cannot be lawfully delegated to the Board of Revenue, and that section 67 (2) can cover only cases where the power can be lawfully delegated. *State of Madras* v. *Karuppiah Ambalam*[4], decides that having regard to the objects and scheme of the Estates Abolition Act in respect of lands taken over by the Government there is no question of any private ownership by any individual till that person obtains a ryotwari patta, that under section 21 of the Act it is only such of the provisions of the Madras Surveys and Boundaries Act as are not inconsistent with or necessary for the working of the provisions of the Estates Abolition Act that should be deemed to be attracted, that having regard to the fact that there could be no boundary dispute in regard to any land taken over under the Estates Abolition Act before the grant of patta, section 14 of the Surveys and Boundaries Act cannot apply to surveys held under section 21 of the Estates Abolition Act, and that no suit can be filed in a civil Court to set aside an order passed by a Survey Officer. *Velliyappa Chettiar* v. *Krishnaveni Ammal*[5], prescribes that where the tanks are found to belong to the landholder the compensation attributable to the rights of the landholder should be ascertained by the application of the formula $A/B \times C$ where A represents the net annual miscellaneous revenue derived from the tanks by the Government under section 34, and B represents the basic annual sum in respect of the under-tenure estate, and C represents the compensation amount deposited by Government. *Adakkalathammal* v. *Chinnayya Panipundar*[6], approving the decision in *Seeni Udayar* v. *Andiappa Ambalam*[7], holds that section 56 (1)

1. (1959) 2 M.L.J. 513.
2. (1959) 2 M.L.J. 254.
3. (1959) 1 M.L.J. 261.
4. (1959) 1 M.L.J. 185.
5. (1959) 1 M.L.J. 226.
6. (1959) 1 M.L.J. 314.
7. (1959) 1 M.L.J. 195.

of the Estates Abolition Act refers only to a dispute concerning the right to obtain a ryotwari patta and a civil Court is not barred from entertaining a suit for possession by a person who had been in possession and had been dispossessed, and that the exclusion of the jurisdiction of the civil Court cannot by implication be held to be more than what is necessary for working out the rights created by the Act. It is further held, though *obiter*, that the repeal of section 56 in 1958 has put an end to the controversy regarding the jurisdiction of civil Courts and even suits originally instituted in civil Courts and transferred to the Settlement Officer or plaints returned for being presented to him would have to be sent back to the respective civil Courts.

MADRAS CULTIVATING TENANTS PROTECTION ACT.

In *Chinnappa Naicker* v. *Umapathy Nayagar*[1], it is held that the term 'landlord' in section 2 (*c*) of the Madras Cultivating Tenants Protection Act includes any person entitled under the common law to evict a cultivating tenant from the holding, exercising the same right as his predecessor in interest, that the definition is so framed as to include every person who can claim rent as landlord and who thus by the tenant's default can evict him, that the mere statement by the tenant in the eviction proceedings itself that the petitioner may not be entitled to the status of a 'landlord' will not constitute a wilful denial of title within the meaning of section 3 (2) (*d*) of the Act, and that such a denial as a ground of eviction must relate to a case of previous acknowledgment of title or an agreement of tenancy between the very parties themselves. *Ramaswamy Gounder* v. *Perianna Moopan*[2], expresses the view that in the absence of a statutory provision enabling an authority to grant remission it is always a matter of grace by the landlord, that a Revenue Court under the Madras Cultivating Tenants Protection Act has no power to grant remission of the agreed rent due from a tenant on the ground of a failure of crop, and that the remedy, if any, open to the tenant is to apply for the fixation of fair rent under the provisions of the Act. *Muthukrishna Chettiar* v. *Kanni Konar*[3], decides that the use of a portion of the land as a fuel depot is not a use for an agricultural or horticultural purpose, that the extent of the land so diverted is immaterial in deciding whether the cultivating tenant had committed an act falling within the scope of section 3 (2) (*c*), that the refusal of the Officer to direct eviction merely because the fuel depot covered only a small extent of the land constitutes a failure by him to exercise the statutory jurisdiction vested in him under that section, that the Revenue Divisional Officer has jurisdiction under section 3 (4) (*b*) to grant time to the tenant for depositing the arrears of rent, and that the failure by him to record his reasons for permitting further time for payment of the arrears does not affect his jurisdiction. *Kamakshi* v. *Sinnachami Naidu*[4] holds that, where the petitioner alleges a surrender of possession by the tenant and a subsequent trespass by him on the property, the procedure prescribed in section 3 cannot apply, and that the aggrieved party will have to approach the civil Court and not the Revenue Divisional Officer for relief. *Kamalambal* v. *Krishnaswami Vandayar*[5] lays down that, where a tenant had been dispossessed in execution of an order of the Civil Court before the Act was extended to the concerned area, he could not claim the benefit of section 4 (5) of the Act, and that it would not be open to the revenue Court to investigate whether in fact there was delivery or not.

MADRAS AGRICULTURISTS RELIEF ACT.

In *Valliammai Achi* v. *Ramachandra Ayyar*[6], it is pointed out that, where in a suit by a prior mortgagee on his mortgage impleading the mortgagor, an agriculturist, and the puisne mortgagee, a non-agriculturist, a decree is passed against the mortgagor for a specific amount as scaled down and against the puisne mortgagee for the full amount, it cannot be said that the moment the entire amount decreed as payable by the agriculturist debtor is paid the entire property stands redeemed and the liability for the difference between the unscaled and scaled amounts will

1. (1959) 2 M.L.J. 466.
2. (1959) 1 M.L.J. 122.
3. (1959) 1 M.L.J. 208.
4. (1959) 2 M.L.J. 512.
5. (1959) 1 M.L.J. 105.
6. (1959) 2 M.L.J. 178.

be automatically wiped off; that the puisne mortgagee who purchases the property in execution of the decree obtained by him on the basis of the puisne mortgage cannot by the deposit of the amount declared as due from the agriculturist mortgagor claim to have satisfied the entire decree on the first mortgage; that if the puisne mortgagee is to get the entire mortgaged property in his absolute right he has to satisfy the entire unscaled decree amount; that if in a suit on a mortgage against different mortgagors with different and separate interests in the mortgaged property, some of them being agriculturists and others non-agriculturists, and a decree for the unscaled amount is passed against the latter and for the scaled down amount against the former, the decree-holder is entitled to execute the decree for the unscaled amount against the non-agriculturists; and the fact that the entire mortgaged property is vested in the mortgagor agriculturists and the other judgment-debtor is only a puisne mortgagee will make no difference. *Venkatasubramania Ayyar* v. *Srinivasa Ayyangar*[1], decides that to attract the application of *Explanation* III to section 8 of the Madras Agriculturists Relief Act to cases of renewal of a debt the identity of the original debt must be preserved, and that if the original debt is extinguished by payment or otherwise there is no scope for applying the concept of renewal or inclusion of the debt in a fresh document. *Mamundi Kaduvetti* v. *Somasundaram Chetti*[2] points out that a co-mortgagor redeeming the entire property under a possessory mortgage and being subrogated to the rights of the mortgagee in regard to the excess payment of the mortgage money paid by him could not be in the position of a mortgagee within the meaning of section 9-A, that the claim of such mortgagor for subrogation cannot be discharged by virtue of that section, that section 9-A cannot apply because the right of subrogation is not by virtue of the execution of the mortgage, and that it is the payment and redemption that entitles the co-mortgagor to be in possession of the property and not the execution of the mortgage by the original mortgagor. *Sreenivasalu Naidu* v. *Thangavelu Chettiar*[3] states that the relief of scaling down a decree under section 16 could be claimed by a judgment-debtor by a separate application in as much as the provision came into force only in 1946, that the fact that the judgment-debtor did not apply at the time of the passing of the decree is not a bar in cases falling under both sub-section (1) and sub-section (2), and the fact that the judgment-debtor who applied for the scaling down of an *ex parte* decree passed against him did not press the same in view of the decree-holder agreeing to give up a certain sum out of the decree amount does not amount to an estoppel preventing the judgment-debtor from claiming the relief of scaling down. In *Narayanan Chettiar* v. *Annamalai Chettiar*[4], the Supreme Court points out that section 19 (2) entitles an appellant-debtor to claim relief when the Court has passed a decree after the commencement of the Act for the repayment of a debt payable at its commencement, that where the two conditions for the application of the first part of section 16 (ii) of the Amending Act of 1949 are satisfied the appellant cannot be barred from claiming relief under section 19 (2), that in cases covered by section 16 (ii) of the Amending Act of 1949 a party is entitled to ask for relief under the Madras Agriculturists Relief Act at two stages both before a decree for the repayment of a debt has been passed and also after a decree has been passed, and that different considerations will arise where the party asks for relief under the Act at the pre-decree stage and that relief is refused on the ground that the Act does not entitle him to any relief under it.

Hindu Law.

In *Velu Niranjan* v. *Alagammal*[5], it is held that the marriage of a Kshatriya woman with a Sudra male will be invalid under the sastras as a pratiloma marriage, that in the absence of any marriage between the parties under any statute or valid custom the relationship will not arise, and that some rites and ceremonies are necessary for a valid marriage in the absence of custom. *Lakshmi Ammal* v. *Ramaswami Naicker*[6], lays down that a legally wedded wife of a Hindu who contracts a second

1. (1959) 1 M.L.J. 351.
2. (1959) 2 M.L.J. 122.
3. (1959) 2 M.L.J. 235.
4. (1959) 2 M.L.J. (S.C.) 55.
5. (1959) 1 M.L.J. 265.
6. (1959) 1 M.L.J. 333.

marriage during the subsistence of the first marriage is not entitled to present an application under section 11 of the Hindu Marriage Act, 1955, for a declaration of the nullity of the second marriage under section 17, but that she can file a suit in the ordinary way to have the second marriage declared void and illegal. *Valliammal* v. *Periasami Udayar*[1] holds that both under the provisions of section 28 of the Hindu Marriage Act as well as the general principles of law an appeal will lie against a decree passed under sections 9 to 13 of the Act to that Court to which appeals generally lie from a decree or order of the Court to which jurisdiction is granted ; that if a Sub-Judge has been given such jurisdiction, an appeal from his decision will lie under section 13 to the District Judge ; that the forum would be the same even if the petition under the Act had been instituted in the District Court after the date of the notification under section 3 (*b*) and transferred by that Court for disposal to the Sub-Court ; and that where a petition under the Act was filed before any such notification an appeal from the decision therein will lie directly to the High Court. *Ananthanarayanan* v. *Meenamani Ammal*[2] lays down that resumption of conjugal relations by the spouses will amount to condonation of previous desertion. In *Jakati* v. *Borkai*[3], the Supreme Court points out that any debt incurred for a cause repugnant to good morals is avyavaharika, that the liability incurred by a father as managing director of a company drawing a salary to contribute in its liquidation on the ground of misfeasance on his part by way of gross negligence in the discharge of his duties is not an avyavaharika debt, that the liability of a son based on his pious obligation to discharge his father's debt does not come to an end as a result of partition of joint family property, that the partition only puts an end to the father's right to make an alienation, that in execution proceedings it is not necessary to implead the sons or to bring another suit if severance of status takes place pending the execution proceedings inasmuch as the son's pious obligation continues and consequently there is only a difference in the mode of enjoyment of the property. *Sevugapandia Thevar* v. *Thyagarajasundara Thevar*[4] holds that a property gifted by a father to his son could not become ancestral property in the hands of the donee simply by reason of the fact that the donee got it from his father or ancestor, that a Mitakshara father has complete powers of disposition over his self-acquired property and is therefore competent to provide how the donee is to take the property when he makes the gift, and that where there are no express or clear words describing the kind of interest to be taken by the donee the donor's intention should be gathered from the language of the document and the surrounding circumstances. *Karuppa Goundan* v. *Sellammal*[5] indicates that to enable a purchaser of joint family property from the manager to be protected the alleged legal necessity for the sale must be correlated to the consideration though not arithmetically, and that where there is only a partial necessity the sale will be valid if the purchaser has acted in good faith and after due inquiries about the need for the particular sale, namely, as to the extent of property required to be sold in the circumstances, though it is not incumbent on him to prove that the entire sale proceeds were actually applied for binding purposes. In *Pedda Subbayya* v. *Akkamma*[6] the Supreme Court lays down that when a Court decides that a suit for partition is beneficial to the minor it does not by itself bring about a division in status ; that the Court is not in the position of a super-guardian of the minor expressing on his behalf an intention to become divided ; that the intention is really expressed by the next friend of the minor and the Court merely decides whether that person has acted in the best interests of the minor ; that the position is made clear when regard is had to what takes place when there is a partition involving a minor outside Court ; as for instance, between a father and son ; that it is immaterial whether the minor was represented in the transaction not by a legal guardian but by a relation so as to bind him ; that if the minor does not show that the partition is prejudicial to him he is bound by it ; and that where a suit instituted by the next friend for partition is found to be beneficial to the minor the true effect of the decision is not

1. (1959) 2 M.L.J. 152.
2. (1959) 1 M.L.J. 157.
3. (1959) 2 M.L.J. (S.C.) 21.
4. (1959) 1 M.L.J. 335.
5. (1959) 1 M.L.J. 173.
6. (1959) 1 M.L.J. (S.C.) 60.

to create in the minor *proprio vigore* a right which he did not possess before but to recognise the right which had accrued to him when the next friend acting on his behalf instituted the action. *Thangavelu Padayachi* v. *Rathna Padayachi*[1] points out that a partition once effected is final and can be reopened only in cases of fraud or mistake or subsequent recovery of family property, and that a partition which is shown to be prejudicial to a minor coparcener will be set aside so far as he is concerned. In *Kotturuswami* v. *Satra Veeravva*[2] the Supreme Court decides that the right of a reversioner as one of the heirs, under section 42, Specific Relief Act is limited to the question of preserving the estate of a limited owner for the benefit of the entire body of reversioners, but as against a full owner the reversioner will have no such right; that as under the Hindu Succession Act the widow becomes a full owner of her husband's estate the reversioner's suit for the declaration of the invalidity of an adoption made by her is not competent; that if the adoption was invalid or had not taken place the widow would remain full owner by virtue of section 14 of the Hindu Succession Act; and that even if the person adopted remained in actual possession when the Act came into force his possession would be merely permissive and the widow must be regarded as being in constructive possession through the person adopted, and in such situation the property must be regarded in law as being possessed by the widow when the Act came into force. *Sundarammal* v. *Sadasiva Reddiar*[3] points out that after the coming into force of the Hindu Succession Act the position of co-widows is that of co-tenants in respect of their absolute rights, that one of them can institute proceedings in her own right as against a trespasser, and that though the benefit of such a proceeding might enure to all the co-tenants so far as the trespasser is concerted it will not be open to him to plead that one of the co-widows has no right to institute the proceeding. In *K. G. Kaimal* v. *T. Lakshmi Amma*[4] the Supreme Court holds that a joint will made by two or more testators in a single document duly executed by each testator, disposing either of their separate properties or their joint properties, cannot be regarded as a single will; that it operates on the death of each testator as his will disposing of his own separate property and is in effect two or more wills; and that on the death of each testator the legatees would become entitled to the properties of the testator who died.

EVIDENCE ACT.

In *Chinnavalayan* v. *State of Madras*[5], it is explained that section 32 (1) of the Evidence Act refers to two kinds of statements, namely, when the statement is made by a person as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death; that the words 'resulted in his death' do not mean 'caused his death', and that declarations are admissions only in so far as they point directly to the fact constituting the *res gestae* of the homicide *i.e.*, the act of killing and the circumstances immediately attendant thereon. *Venkatesam Naidu* v. *State of Madras*[6] holds that inter-departmental correspondence between the officers of departments of Government cannot be compelled to be produced though any correspondence that passed between an officer of the department and the party to the dispute must be produced, and that a communication made by one Secretary to Government to another Secretary will be a communication in respect of which privilege can be claimed. In *Bhogilal Chunilal Pandya* v. *State of Bombay*[7], the Supreme Court decides that a statement under section 157 does not involve the element of communication to another person or something that is 'stated' to become a statement; that notes of attendance made by a Solicitor at a conversation would be 'statements' within the meaning of the section that would be admissible to corroborate the Solicitor's evidence; and that refreshing memory under section 159 is confined to statements in writing made under the conditions mentioned in that section whereas corroboration under section 157 may be either by statements in writing or by oral statements.

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1. (1959) 2 M.L.J. 279.
2. (1959) 1 M.L.J. (S.C.) 158.
3. (1959) 1 M.L.J. 120.
4. (1959) 1 M.L.J. (S.C.) 44.
5. (1959) 1 M.L.J. 246.
6. (1959) 1 M.L.J. 288.
7. (1959) 1 M.L.J. (S.C.) 201.

Court Fees.

In *Chinna Venkataramaniah* v. *Pedda Venkataramaiah*[1], it is held that where a situation in which the plaintiff seeks a relief stated in a section of the Court-Fees Act is one of several situations in which such relief may be prayed for, but the particular situation is expressly provided for in another section of the Act, Court-fee should be paid under the latter section only ; that section 36 (1) of the Madras Court-Fees Act applies to suits for dissolution and accounts of a partnership ; that the relief asked for in the plaint, namely, partition and separate possession of a half share of the assets of a dissolved partnership after providing for the debts, arises out of a situation covered in section 36 (1) ; and that whatever name the plaintiff chooses to give to the relief he seeks, in reality, it relates to the accounts of a dissolved partnership and Court-fee is therefore payable under section 36 (1) and not under section 37 (2). *Nambikkai Mary Ammal* v. *Prakasa Mary*[2], states that where a plaintiff was given a property with a direction that she should pay certain others a part value of the same as on a particular date and the plaintiff filed a suit to work out her rights and ascertain the money payable to the others, the suit is not one for partition but one for carrying out the directions of the settlor and Court-fees will have to be paid under section 39 by all the parties concerned. *Ponnuswami Odayar* v. *Kosambu*[3], takes the view that where a suit by two Hindus being the nearest reversioners each being entitled to a half share of property was dismissed as to one of them, a subsequent suit by the sons of the latter after his death alleging his negligence and ignoring the dismissal must be valued, for purposes of Court-fee, at the amount of the value of the half share of their father through whom they claim, since the dismissal of the prior suit will have to be set aside before the sons can reagitate the matter, and hence Court-fee must be paid under section 40 on the market value of that half share on the date of the plaint. *Raju* v. *Venkataswami Naidu*[4], decides that where a sale deed was executed by the mother as guardian of her sons, the father of the minors also being a party to the deed, a suit by the minors for a declaration and possession of the property on the ground of the sale deed being void and not binding on them, the document of sale will have to be set aside on the basis that the alienation was by legal guardian and Court-fee must be paid under section 40 on the market value of the properties. *Gnanambal Ammal* v. *Kannappa Pillai*[5], holds that where a plaintiff's case is that a deed is sham and nominal it need not be set aside and a suit for relief on that footing is not one for cancellation attracting the provisions of section 40, but if the plaintiff sues for its cancellation Court-fee will have to be paid on that relief whether it is necessary to have the deed cancelled or not. *Karupannan* v. *Sadaya Maistry*[6], points out that section 41 (2) provides for the valuation of suits to set aside a summary decision of a civil or revenue Court, that such suits contemplate the adjudication of title and cannot be said as a rule to be incapable of valuation, that incidental reliefs such as injunction or possession will not alter the character of the suit so long as the subject-matter of the suit has a market value, that the subject-matter must be held to be what the summary orders were concerned with, namely, immovable property, and Court-fee will have to be paid on the proportionate market value as laid down in section 41 (2). *Mohan* v. *Balaram*[7], takes the view that where an application for leave to appeal *in forma pauperis* was refused with a direction to the applicant to pay Court-fee within a fixed period, in default whereof the appeal was to stand rejected, and the applicant paid only a part of the requisite Court-fee and failed due to inability to pay the balance and applied for a refund of the Court-fee already paid on the memorandum of appeal, the case is a fit one for directing the issue of a certificate of refund ; and that section 66 (1) indicates the policy of the legislature that refund in such cases will be just and equitable. *Ranganna* v. *State of Madras*[8], holds that section 69 and other provisions for refund are enacted for cases where the levy was under the Court-Fees Act of 1955 and cannot be read as authorising a refund in respect of Court-fee paid under any of the repealed enact-

1. (1959) 1 M.L.J. 224.
2. (1959) 2 M.L.J. 120.
3. (1959) 1 M.L.J. 21.
4. (1959) 1 M.L.J. 118.
5. (1959) 1 M.L.J. 355.
6. (1959) 2 M.L.J. 440.
7. (1959) 1 M.L.J. 110.
8. (1959) 1 M.L.J. 160.

ments or rules ; that in suits instituted on the Original Side of the High Court before the coming into force of the Act though the levy of Court-fee was made in accordance with the Court-Fees Act, 1870, refund of Court-fee could be directed under rule 13-A of the Madras High Court Court-fee Rules even though the Act itself contained no provision for refund ; that where a suit so filed was subsequently transferred to the City Civil Court by force of statute enlarging the jurisdiction of that Court the rule 13-A will not cease to be applicable ; that apart from any statutory provisions it is now well recognised that in cases of excess payment of Court-fees the Courts have inherent powers to direct refund of Court-fees ; and that on principle there can be no difference between a case where the original payment of Court-fee is in excess of what is payable and a case where the original collection becomes excessive by reason of a subsequent event like the settlement of the suit. *Thiruvengadaswami Mudaliar* v. *State of Madras*[1], states that there is nothing in section 37 (2) to justify the Court in levying Court-fee under the Act in a claim suit under Order 21 rule 58, Civil Procedure Code, filed after the commencement of the Court-Fees Act. 1955, in respect of a claim petition filed before the commencement of the Act and Court-fee need be paid as due on the date of the petition. *Ramaswami Naidu* v. *Salammal*[2], decides that Article 11 (*a*) of Schedule II would apply only to cases where the parties to an award seek a direction of the Court to direct an arbitrator to file an award and cannot apply to a case where an arbitrator without any direction of Court himself proceeds to file the award under section 14 (2) of the Arbitration Act and that to such cases the residuary provision in Article 11 (*b*) will apply.

Income-tax Act.

In *Muthiah Chettiar* v. *Commissioner of Income-tax*[3], the view is expressed that where an assessee has received repayments he will not be liable to tax in respect of the amounts he has received as or towards principal but will be liable in respect of moneys which he has received as or towards interest, that where only a part of the debt has been recovered the assessee has liberty subject to the law relating to the appropriation of payments to appropriate the money he has received either towards the principal or towards the interest, and that if the payment has been lawfully appropriated towards interest the assessee will be liable to pay tax thereon but not if he has appropriated it towards the principal. In *Dhandhania Kadia & Co.* v. *Commissioner of Income-tax*[4], the Supreme Court points out that it would be repugnant to the definition of the word ' dividend ' in section 2 (6-A) (*c*) of the Income-tax Act to import into the words ' six previous years ' the definition of ' previous year ' in section 2 (11), and that accumulated profits sought to be caught in section 2 (6-A) (*c*) would be the profits accumulated in the financial year preceding the year in which the liquidation takes place. *Commissioner of Income-tax* v. *C. S. Sastri*[5], holds that the concept of ' total income ' under section 2 (5) being larger than the concept of ' earned income ' the total income of an assessee is generally assumed to be larger than his earned income, that whether this is so or not section 15-A provides relief to an assessee in respect of his earned income wherever it enters into the computation of his total income, and that where an assessee showed an income of Rs. 31,000 for a particular assessment year and a loss of Rs. 15,000 in that year from his other properties making his net income only Rs. 16,000 the assessee would be entitled to earned income relief under section 15-A, subject to the statutory maximum, on his entire earned income of Rs. 31,000 and not on the net income of Rs. 16,000 only. *Ramaswami Naidu* v. *Commissioner of Income-tax*[6], points out that ' income ' under the Indian Income-tax Act implies the idea of receipts of money, actual or constructive, that the policy of the Act is to tax such income when paid or received, and that where a company deducted in Ceylon in pursuance of the law of that place a certain amount from the dividends payable to an assessee-shareholder in India and retained it to itself, the amount so deducted cannot be held to have been received by the assessee, nor can it be regarded as ' income accruing or arising ' in

1. (1959) 1 M.L.J. 151.
2. (1959) 2 M.L.J. 417.
3. (1959) 2 M.L.J. 262.
4. (1959) 1 M.L.J. (S.C.) 105.
5. (1959) 1 M.L.J. 168.
6. (1959) 2 M.L.J. 358.

as much as the assessee had no right to recover the same at any time. In *Commissioner of Income-tax* v. *Ramakrishna Deo*[1], the Supreme Court decides that it is for a person who claims exemption to establish it; hence, it is for the assessee to prove that the income sought to be taxed was agricultural income exempt from taxation under section 4 (3) (viii), that to decide whether the income received by the assessee from a sale of forest trees was agricultural income or not the test is whether those trees were planted by the proprietor of the estate or grew spontaneously, and that if it is the latter it will be wholly immaterial that the proprietor had maintained a large establishment for the purpose of preserving the forest and assisting in the growth of the trees, for, *ex hypothesi*, he performed no basic operations for bringing the forests into being. In *Seth Deomal* v. *Commissioner of Income-tax*[2], the Supreme Court lays down that section 5 gives certain powers to the Central Board of Revenue and the Income-tax Commissioners regarding withdrawal of cases from one area to another or from one Income-tax Officer to another; that sub-section (2) empowers the Government to appoint as many Commissioners of Income-tax as it thinks fit who have to perform their functions in respect of different areas, persons and cases or classes thereof as the Central Board of Revenue may direct; that sub-section (7-A) conferring on the Central Board of Revenue the power to transfer a case from one Officer to another at any stage of the proceedings does not in any way qualify or cut down the powers under section 5 (2); that the two sub-sections are complementary and operate in two different spheres; that where the Central Board of Revenue directed the Commissioner of Income-tax, Calcutta (Central) to exercise his functions in certain cases the action taken falls under section 5 (2) and not under sub-section (7-A); that after an order section 5 (2) is passed the provisions of section 64 (1) and (2) conferring jurisdiction on the Income-tax Officer of the area wherein the assessee was carrying on business can have no application because of the provisions of section 64 (5); that under section 64 (3) the question as to the place of assessment when it arises is determined by the Commissioner to whom the objection is to be referred by the Income-tax Officer and that neither section 30 nor section 33 provides for an appeal on the question of the place of assessment. *Veerappa Chettiar* v. *Commissioner of Income-tax*[3], holds that the word 'charge' in the expression 'annual charge' in section 9 (1) connotes something more than a mere liability to make an annual payment without any reference to security for such payment, and that an assessee cannot claim as lawful deductions permitted by section 9 (1) payments made towards Ceylon municipal rates in respect of a house owned there as there is nothing in the law of Ceylon making such liability a charge on the property. In *Commissioner of Income-tax* v. *Rai Bahadur Jairam Valji*[4], the Supreme Court lays down that when once it is found that a contract was entered into in the ordinary course of business any compensation received by a party thereto for premature termination will be a revenue receipt irrespective of whether its performance was to consist of a single act or series of acts spread over a period, and is assessable to income-tax. In *Commissioner of Income-tax, West Bengal* v. *Calcutta Stock Exchange Association*[5], it is held by the Supreme Court that the words 'performing specific services' in section 10 (6) mean with reference to a trade, professional or other association 'conferring particular benefits' on the members thereof; that the term 'remuneration' includes recompense, reward, payment, etc., and is not confined to wages only; that the word 'demand' shows that the Legislature has deliberately used the fiction of treating such services as 'business'; that the sub-section further requires that the remuneration should be 'definitely related' to the services, that is, that the services would not be available but for specific payments (fees, subscriptions, etc.) charged by the association; and that there is no warrant to limit the application of the word 'services' as having reference to 'matters outside the mutual dealings of the members'. *Messrs P. Orr & Sons* v. *Commissioner of Income-tax*[6], decides that payments made to secure the termination of managing agency rights held under a contract are a permissible deduction under section 10 (2) (*xv*), since judged by the test of business expediency the amount was expended wholly and exclu-

1. (1959) 1 M.L.J. (S.C.) 142.
2. (1959) 2 M.L.J. (S.C.) 63.
3. (1959) 2 M.L.J. 158.
4. (1959) 1 M.L.J. (S.C.) 116.
5. (1959) 2 M.L.J. (S.C.) 224.
6. (1959) 2 M.L.J. 29.

sively for the business of the assessee company and the fact that the person concerned benefited is not proof that the sole object of the company in making the payment was that the latter should benefit. *Ramiza Bi Saheb* v. *Income-tax Officer*[1], states that under section 16 (3) the share income of a minor son who has been admitted to the benefits of a partnership should not be included in the share income of the mother from the firm of which she is a partner for purposes of assessment to tax, and that where under section 31 (4) revised orders of assessment are issued by the appellate authority the original orders of assessment ceased to be operative and there is no need for the assessee to challenge the validity of the original orders in any proceedings. *Chockalingam Chettiar* v. *Income-tax Officer*[2], holds that a failure to pay the advance tax under section 18-A (3) would entail the payment of interest under sub-sections (6) and (8) and that if the assessment order shows that interest has not been added to the tax determined on the basis of regular assessment and such omission was a mistake section 35 will apply and the mistake can be rectified under that section. In *R. C. Mitter & Sons* v. *Commissioner of Income-tax, West Bengal*[3], the Supreme Court lays down that the word 'constituted' in section 26-A would include both the idea of creating and establishing a partnership as well as giving a legal form to the contract of partnership ; that the expression 'constituted under an instrument of partnership' would include not only firms created by an instrument of partnership but also those created orally but given legal form by reducing the terms and conditions into writing ; and that reading sections 26, 26-A and 28 and the rules 2 to 6 of the Income-tax Rules for a firm to be entitled to registration, (i) it should be constituted under an instrument of partnership specifying the individual shares of the partners, (ii) an application on behalf of and signed by the partners containing all particulars as set out in the rules should have been made, (iii) the application should have been made before the assessment of the firm's income under section 23 for that particular year, (iv) the profit or loss of the business for the previous year should have been divided or credited in accordance with the terms of the instrument, and (v) the partnership must have been genuine and should have actually existed in conformity with the terms and conditions of the Instrument. In *Commissioner of Income-tax, Delhi* v. *Teja Singh*[4], the Supreme Court makes it clear that by reason of the legal fiction in section 18-A (9) (*b*) the failure to send an estimate of the tax under section 18-A (3) is treated as a failure to furnish a return of the income under section 22, that it is a necessary implication of that fiction that the estimate of tax on the income to be submitted under section 18-A is different from the return to be furnished under section 22, that the notices required to be given under section 22 must be deemed to have been given, that in that view section 28 will apply on its own terms, and it is competent to the Income-tax Authorities to impose a penalty under section 28 read with section 18-A (9) (*b*) where there has been a failure to comply with section 18-A (3). *Sunrathmull* v. *Additional Income-tax Officer*[5] points out that section 34 is intended to deal with cases in which income has escaped assessment wholly or in part by reason of the failure by the assessee to make a return, or to disclose fully and freely all the material facts, etc., that the period of limitation for proceedings where the escape of assessment is not due to the assessee's conduct is four years whatever be the amount ; that where the escape is due to the assessee's conduct and the amount involved is less than one lakh or more there is no period of limitation; and that the second proviso to section 34 (3) abrogates the period of limitation in all cases where action is taken in pursuance of a finding or direction given by one of the Authorities mentioned in the proviso; but, that the proviso cannot apply where the remedy of the Department had become barred before the proviso became law In *Maharaj Kumar Kanial Singh* v. *Commissioner of Income-tax*[6], the Supreme Court makes it clear that the term 'information' in section 34 (1) includes information as to the true nature and correct state of the law and would cover information as to relevant judicial decisions ; that information as to the true state or meaning of the law derived freshly from an external source of authoritative character is 'information' within the meaning of the section ; that an Income-tax Officer can treat a subsequent Privy

1. (1959) 2 M.L.J. 437.
2. (1959) 2 M.L.J. 131.
3. (1959) 2 M.L.J. (S.C.) 192.
4. (1959) 1 M.L.J. (S.C.) 154.
5. (1959) 2 M.L.J. 189.
6. (1959) 1 M.L.J. (S.C.) 92.

Council decision opposed to the view followed in the assessment that interest on arrears of agricultural rent was agricultural income exempt from tax as 'information' within the meaning of section 34 (1) (*b*) and assess such interest as income which had escaped assessment; and that even in a case where a return had been submitted if the Income-tax Officer has failed to take into account a part of the assessable income it will be a case of part of the income having escaped assessment. In *Narayanan Chetty* v. *Income-tax Officer*[1], the Supreme Court holds that the service of the requisite notice on the assessee is a condition precedent to the validity of any reassessment made under section 34 and not a mere procedural requirement; so much so, if no notice is issued or if the notice issued is shown to be invalid the proceedings taken by the Income-tax Officer would be illegal and void; that a firm does not cease to be an assessee merely because of allocation of income to the partners in proportion to their respective shares; and that accordingly a notice issued against the firm and served on one of the partners satisfies the requirements of section 34 (1) (*a*). In *Venkataswami Naidu* v. *Commissioner of Income-tax*[2], the Supreme Court makes it clear that if the point raised in an income-tax reference relates to the construction of a document of title or interpretation of the provisions of a statute it is a pure question of law in respect of which the High Court is free to take its own view without being fettered by the view of the Tribunal; that where, however, the point sought to be raised is really a question of fact the High Court would be bound by the finding of the Tribunal and such conclusion cannot be challenged on the ground that it is based on misappreciation of evidence; but, where the inference has been drawn on a consideration of inadmissible evidence or after excluding admissible evidence the High Court may examine the correctness of the findings reached by the Tribunal; likewise it is open to a party to challenge a finding on the ground that it is not supported by any legal evidence or is not rationally possible, and if the plea is established the Court may hold the conclusion to be perverse and set it aside.

TORTS.

In *Chinnamuthu Ambalam* v. *Jagannathachariar*[3], it is pointed out that the term 'malice' in relation to an action for malicious prosecution means an improper or indirect motive, *i.e.*, a motive other than a desire to vindicate public justice or a private right and need not be a feeling of enmity, spite, or ill-will, that the term 'prosecution' in that context has a special meaning and the question of who is the real prosecutor has to be established irrespective of whether the complaint is by the defendant himself, and that it is well settled that instigating a prosecution is different from the act of giving information on the strength of which a prosecution is commenced by some one else in the exercise of his own discretion. *State of Madras* v. *James Appadurai*[4], holds that in so far as an injury results in actual pecuniary loss, past or prospective, full compensation should be awarded in respect of such loss, but that would not mean that in the case of loss of prospective earnings the compensation should be the annual earnings multiplied by the number of years for which the plaintiff could be expected to have worked if he had not been injured. *New Central Hall* v. *United Commercial Bank*[5], lays down that damages can be awarded even without proof of special loss in cases like trespass not causing damages but only annoyance, or where a cheque issued by a non-trader customer is wrongly dishonoured by a bank; that in such cases the damages awarded will only be nominal; but, where a cheque issued by a trader customer is wrongfully dishonoured even special damages can be awarded without proof of special loss or damage, and the fact that such dishonouring was due to a mistake cannot affect the liability of the bank to pay damages for the wrongful act.

LIMITATION.

In *State of Madras* v. *Venkataswami Naidu*[6], it is held that the Madras Estates (Supplementary) Act (XXX of 1956) does not make section 5 of the Limitation Act applicable to applications under section 4 of that Act. *Sadaya*

1. (1959) 1 M.L.J. (S.C.) 109.
2. (1959) 2 M.L.J. (S.C.) 31.
3. (1959) 1 M.L.J. 135.
4. (1959) 1 M.L.J. 278.
5. (1959) 1 M.L.J. 28.
6. (1959) 2 M.L.J. 39.

Goundar v. *Veerappa Goundar*[1], decides that the period of limitation prescribed in section 19 of the Limitation Act is not limited to the period of the First Schedule to the Act, that the period which a party is entitled to exclude under any law for the time being in force should also be taken into account and that where the Madras Indebted Agriculturists (Temporary Relief) Ordinance, 1953, had come into force before the expiry of the limitation period for the suit, followed by Acts V of 1954 and I of 1956 prohibiting the filing of suits till 1st July, 1955, and the endorsement was made on 23rd June, 1955, the limitation for the suit was validly saved. *Wazir Sultan & Sons* v. *Satchithananda Rao*[2], makes it clear that under section 20 a payment by itself even if it was established that it was made on account of a debt would not be sufficient to start a fresh period of limitation, that there should be an acknowledgment of the payment in the handwriting of or in writing signed by the person making the payment, that the acknowledgment is only a record in writing and evidentiary in character, and that it is the payment that starts the fresh period of limitation. *Pankajammal* v. *Sambandamurthi*[3], lays down that under Article 62 the time from which limitation runs for a suit against the defendant claiming rateable distribution under section 73 (1), Civil Procedure Code, is the time when the defendant received the money, and the defendant must for the purposes of the Article be deemed to have received the money on the date of the confirmation of the sale in cases where the defendant himself purchases and sets-off the sale price against his decree. *Valliammai Achi* v. *Chockalingam Chettiar*[4], decides that the various clauses in Article 182 are disjunctive and the decree-holder has the option of taking the benefit of any one clause in any case for saving his application from the bar of limitation, that clause (2) of the section will not preclude the applicability of either clause (5) or clause (1), and that where clause (5) applies it is immaterial whether the execution petition would be in time under clause (2).

CIVIL PROCEDURE CODE.

In *Veeralakshmi Ammal, In re*[5], it is pointed out that the decree of an appellate Court declaring the plaintiff to be entitled to a half share of property and directing the separation of the share and putting the plaintiff in possession of it cannot be said to have finally disposed of the matter in relation to the items of which the plaintiff has to be put in exclusive possession till they are ascertained and allotted to his share ; and that the decree is only a preliminary decree within the meaning of the *Explanation* to section 2 (2) of the Civil Procedure Code ; and that no further direction is necessary to enable the plaintiff to move the Court of first instance as regards the division of the properties. *Jaga Button Industries* v. *State of Madras*[6], decides that the jurisdiction of the Civil Courts is barred under section 9 of the Code in respect of suits for setting aside or modifying assessments made under the Madras General Sales Tax Act in view of the provision in section 18-A of that Act withdrawing such suits from the purview of Civil Courts. *South Madras Electric Supply Corporation* v. *Jagannatha Ayyar*[7], lays down that unless there is express ouster of the jurisdiction of the Civil Court the presumption is that the Civil Court has jurisdiction, and that there is nothing in the Electricity Act, 1910, to bar the jurisdiction of the Courts to entertain suits for the removal of posts supporting high tension electric lines fixed on a land without the permission of the owner. *Mariyanayagam Nadar* v. *Vedamanickam Sathiahesan*[8], holds that the impleading of a new party or adding some more items of property in the later suit will not take away the binding character and finality of the earlier decision on the matter under section 11. *Kothandarama Gramani* v. *Sellammal*[9], makes it clear that where the earlier suit was on behalf of the family in regard to the joint family rights a subsequent suit by the son of a coparcener who was a party to the prior suit would be barred by *res judicata* under *Explanation* 6 to section 11 that even otherwise the suit will be barred by *res judicata*

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1. (1959) 1 M.L.J. 312.
2. (1959) 2 M.L.J. 244.
3. (1959) 2 M.L.J. 443.
4. (1959) 2 M.L.J. 422.
5. (1959) 1 M.L.J. 165.
6. (1959) 2 M.L.J. 415.
7. (1959) 2 M.L.J. 446.
8. (1959) 1 M.L.J. 346.
9. (1959) 2 M.L.J. 218.

as his father was a party to the earlier suit and he should be deemed to have been completely represented in that suit, and that even gross negligence in the conduct of the prior suit would not lift the subsequent suit from out of the bar of *res judicata* under section 11. *Ramaswami Goundar* v. *Muthuvel Goundar*[1], decides that whenever there is a defect in the service of a sale notice under Order 21, rule 66 and the petition for setting aside the sale relies on it and puts in section 47 as well, a second appeal will be competent. In *Narayanaswami Iyer* v. *Union of India*[2], it is pointed out that the question of notice under section 80 has no bearing on the liability of the Central Government in relation to the railways run by it ; that the section could not govern the scope and application of section 77 of the Railways Act ; that the amendment of section 80, Civil Procedure Code, in 1948 inserting a special provision as to notice in case of railways could not have any effect on the question of liability of the Government who now own the several railways after amalgamation ; and that it is desirable for the Central Government to undertake legislation dispensing with notice under section 80 in a case where notice has been given under section 77 of the Railways Act and also indicating to which railway administration such a notice should be given in cases where through traffic passes over more than one railway administration of the Government. In *Chaube Jagadish Prasad* v. *Ganga Prasad Chaturvedi*[3], the Supreme Court makes it clear that the power of the High Court to correct questions of jurisdiction is to be found within section 115, Civil Procedure Code and that where there is no error falling within the section the High Court will not have the power to interfere. *Ramanatha Ayyar* v. *Pappu Reddiar*[4], decides that the restitution contemplated under section 144 is the restoration to the injured party of what he had lost and not the deprivation from the other party of what he had wrongfully gained ; that where money was deposited in Court as a condition for grant of stay of execution of a decree and subsequently the decree was varied it is open to the aggrieved party to claim interest on the money deposited by way of restitution ; and the fact that the amount deposited was not withdrawn by the other party will make no difference. *Kanthimathi Mills* v. *Special Land Acquisition Officer*[5], lays down that it makes no difference to the applicability of the principle of restitution whether the deposit in Court was made voluntarily or under threat of execution, and that the party could claim interest on the excess amount he was obliged to deposit by virtue of the lower Court's decree. *Nagutha Mohamad Nainar* v. *Vedavalli Ammal*[6], holds that under Order 6, rule 17, no amendment of the plaint which would deprive the defendant of a valuable right of limitation or oust the jurisdiction of the trial Court to try the suit can be allowed. *ChinnathambiGoundar* v. *Narayanaswami Goundar*[7], takes the view that the statement by a decree-holder in a petition for execution of a partition decree that the properties concerned had been divided by the Panchayatdars though with a qualification that the division had not been completed would amount to a certificate of adjustment under Order 21, rule 2 and the executing Court can go into the question of the division pleaded. *Subramania Iyer* v. *Ramaswami Pillai*[8], decides that a set-off under Order 21, rule 19, cannot be claimed by a plaintiff sharer in a partition suit for costs decreed to him as against the price of the share of the defendant payable under a purchase by him of the share at a sale held under the Partition Act which he had been directed to deposit in Court to the prejudice of the right of a mortgagee of the defendant's share created by the defendant during the pendency of the partition suit, and that the mortgagee will have a charge on the amount directed to be brought into Court. *Balakrishna Goundar* v. *Amrithavalli Ammal*[9], decides that a Hindu wife in possession and enjoyment of the property of her husband who has not been heard of for a period of four or five years, there being none else to claim heirship if he were dead, is a person holding an interest in the property within the meaning of Order 21, rule 89, as amended in Madras and can apply making the necessary deposit where the property has been sold in execution of the decree of a creditor in the absence of the husband ; and that,

1. (1959) 2 M.L.J. 212.
2. (1959) 2 M.L.J. 479.
3. (1959) 1 M.L.J. (S.C.) 171.
4. (1959) 2 M.L.J. 184.
5. (1959) 2 M.L.J. 506.
6. (1959) 1 M.L.J. 307.
7. (1959) 2 M.L.J. 467.
8. (1959) 1 M.L.J. 178.
9. (1959) 2 M.L.J. 186.

where there is no proof that the husband has not been heard of for seven years, he cannot be presumed to be dead and the wife cannot claim to have any interest *in praesenti* in his property as his widow as a person deriving title from the judgment-debtor. *Mohammad Ismail Maracair* v. *Doraisami*[1], points out that a mortgage is one and indivisible in regard to the amount and security and no suit can be filed to enforce a mortgage entailing the disintegration of either of the elements and that all the mortgagees must be represented in the suit not merely by reason of Order 34, rule 1, but also by reason of the substantive law and the contract between the parties. *Great Eastern Shipping Co.* v. *Mohammad Samiullah Saheb & Co.*[2], takes the view that as the jurisdiction given to the High Court under section 115 is an appellate jurisdiction the procedure followed by the Courts in regard to appeals would be attracted, and therefore Order 41, rule 31, will apply to civil revision petitions. *Ramaswami Padayachi* v. *Shanmugha Padayachi*[3], states that the mistake or error justifying a review under Order 47, rule 1, is most often an error of fact and may in certain cases be one of law also, but in all cases it should be an error of inadvertence ; that the test is whether the Court itself would have made the correction if aware of the particular fact or circumstance while writing the judgment ; that an erroneous view of a debatable point of law or failure to interpret the law correctly would not be a mistake or error apparent on the face of the record ; and that an excusable failure to bring to the notice of the Court the relevant material or the mistake of counsel would be a sufficient cause within the meaning of the rule.

Penal Code.

In *Pappathi Ammal* v. *State of Madras*[4], it is held that somnambulism might constitute a good ground for exemption from criminal liability if it could be established that the act was done while in that state of mind and that somnambulism amounts to that unsoundness of mind as would attract the application of section 84 of the Indian Penal Code. In *Faguna Kantha Nath* v. *State of Assam*[5], the Supreme Court points out that under section 165-A for a person to be guilty of the abetment of an offence under section 161 it is not nece sary that the offence should have been committed, but the requirements of section 107 must be satisfied ; and where it was not the prosecution case that the appellant had instigated the other accused to demand illegal gratification or had entered into a conspiracy with him for the commission of an offence under section 161, and the other accused is acquitted of an offence under section 161 such offence not having been committed, no question of intentionally aiding by any act or omission in the commission of such offence can arise ; and the conviction of the appellant for the abetment of such offence cannot stand. In *Ranjit Singh* v. *State of Pepsu*[6], the Supreme Court lays down that whenever a person makes a statement in Court on oath he is bound to state the truth and failure to do so would render him liable under section 193; that it is no defence to say that he was not bound to enter the witness-box; that a defendant or even a plaintiff is not so bound, but, yet, if either of them chooses to do so he cannot after taking the oath to make a truthful statement state anything which is false; and that even beliefs will fall under *Explanation* 2 to section 191. In *Veerabhadran Chettiar* v. *Ramaswami Naicker*[7], the Supreme Court expresses the view that the words 'any object held sacred by any of persons' in section 295 cannot be restricted to idols in temples or to idols carried in procession on festive occasions, that any object however trivial or destitute of real value in itself if regarded as sacred by any class of persons would come within the meaning of the section, that the section is intended to respect the religious susceptibilities of persons of different religious persuasions or creeds, and that the Court should be circumspect in such matters and pay due regard to the feelings and religious emotions of different classes of persons with different beliefs irrespective of the consideration whether or not they share those beliefs or whether they are rational or otherwise in the opinion of the Court.

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1. (1959) 2 M.L.J. 74.
2. (1959) 1 M.L.J. 148.
3. (1959) 2 M.L.J. 201.
4. (1959) 1 M.L.J. 125.
5. (1959) 2 M.L.J. (S.C.) 18.
6. (1959) 2 M.L.J. (S.C.) 121.
7. (1959) 1 M.L.J. (S.C.) 1.

Criminal Procedure Code.

In *Public Prosecutor* v. *Saroja*[1], it is held that in drawing the attention of the Court in a revision petition to the illegal character of the conviction the Public Prosecutor does not stand in the position of a private party and is not bound to file a petition to excuse the delay in filing the revision petition against the illegal conviction in the discharge of his duty to bring to the notice of the Court such cases. *State of Madhya Pradesh* v. *Mubarak Ali*[2], decides that section 4 (1) of the Criminal Procedure Code defines 'investigation' as including all the proceedings under that Code for the collection of evidence conducted by the Police Officer or other persons authorised by the Magistrate in that behalf and that Chapter XV prescribes the procedure for such investigation. *Thirunavukkarasu*, In re[3], states that section 107 is not intended for the punishment of past offences but for the prevention of acts that may amount to or may lead to a breach of the peace hereafter ; that the institution of proceedings under that section is not an accusation of offence and the particulars specified in the notice under section 112 are not a catalogue of charges but only information which in the opinion of the prosecution would suggest that the counter-petitioner is likely to cause a breach of the peace ; that section 107 will apply notwithstanding that the facts alleged in the notice may amount to specific offences for which he may be punished ; that the existence of previous convictions or acquittals in a number of previous cases will not be substantive evidence in proceedings under section 107 as in the case of proceedings under section 110 ; that an order under section 117 (3) passed after considering the question of emergency as a separate question is not bad merely because the Magistrate has based it on the same information which was the basis of the order under section 112 ; and that an order under Chapter VIII is revisable by the Court under sections 435 and 439 but the High Court will not ordinarily interfere on the merits. In *Tahsildar Singh* v. *State of Uttar Pradesh*[4], the Supreme Court makes it clear that both section 162 and the proviso are intended to serve the interest of the accused, that it would be doing injustice to the language of the latter if the statement made to the police by a witness during investigation instead of being used to contradict the witness during trial in the manner provided by section 145 of the Evidence Act is used for cross-examining the witness ; that the word 'cross-examine' in the last line of the first proviso to section 162, Criminal Procedure Code, cannot be understood to mean the entire gamut of cross-examination without reference to the limited scope of the proviso, but should be confined only to cross-examination by contradiction, that a statement in writing made by a witness to the police officer in the course of investigation can be used only to contradict the witness and for no other purpose ; that statements not reduced to writing cannot be so used ; that though a particular statement is not expressly recorded a statement that can be deemed to be a part of what has been recorded can be used for contradictions not because it is an omission strictly so-called but because it is deemed to be part of the recorded statement; and that such a fiction is permissible only in three cases, namely, (i) where a recital is necessarily implied from the recital or recitals found in the statement, (ii) a negative aspect of a positive recital in a statement, and (iii) when the statement before the police and the statement before the Court cannot stand together. *Rajangam* v. *State of Madras*[5], holds that the Criminal Procedure Code contemplates three modes of initiation of proceedings, namely, on a complaint by the aggrieved party, on information given to the police of the commission of a cognisable offence, and on an enquiry by a Magistrate in certain special cases contemplated under section 176 of the Code ; that Order No. 157 of the Police Standing Orders which are in the nature of executive instructions implements the procedure contemplated for an enquiry under section 176 of the Code; that an enquiry under those provisions is only a fact-finding one and the procedure adopted, though it is for particular kinds of cases, is not hit by Article 14 of the Constitution ; nor is it offensive to the constitutional guarantee against testimonial compulsion under Article 20 (3) ; and

1. (1959) 1 M.L.J. 193.
2. (1959) 2 M.L.J. (S.C.) 105.
3. (1959) 2 M.L.J. 11.
4. (1959) 2 M.L.J. (S.C.) 201.
5. (1959) 1 M.L.J. 71.

that the proceedings held in pursuance of the aforesaid provisions as a fact-finding enquiry are not judicial or even quasi-judicial proceedings amenable to the special jurisdiction of the High Court under Article 226 of the Constitution. In *Ranjit Singh* v. *State of Pepsu*[1], the Supreme Court lays down that under section 200, proviso (*aa*), it is not necessary for a Magistrate when a complaint is made by a Court to examine the complainant, and that neither section 200 nor section 202 requires a preliminary enquiry before a Magistrate can assume jurisdiction to issue process against the person complained against. *Arusami Goundan*, In re[2], decides that the condition of the pardon granted to an approver is that he must make a full and true disclosure, that the obligation would arise whenever the approver is called upon to give evidence touching the matter whether it be in the Committing Court or in the Sessions Court, that neither as a matter of reason or of logic, nor as a matter of statutory interpretation can it be said that section 339 (1) is dependent on or connected with section 337 (2) in the sense that the approver must be examined both in the Committing Court and the Sessions Court before it can be held that he has forfeited the pardon, and that it is sufficient if he fails to conform to the conditions on which the pardon has been granted to him at either stage. *E. S. I. Corporation* v. *Haji Mohamed Ismail Sahib*[3], lays down that section 346 (1) is wide enough to include cases of want of territorial or local jurisdiction in the Magistrate concerned, that the High Court may in the circumstances contemplated in clauses (*a*) to (*e*) of section 526 (1) clothe with jurisdiction any Court not empowered under sections 177 to 184 to enquire into any offences and try the same provided that in other respects the Court is competent to inquire into and try such offences. *Esakki Thevar*, In re[4], decides that the High Court could and does interfere in criminal revision even upon findings of fact where though there may be concurrent findings of two Courts below it is clear that a conviction is not in the broad interests of justice or where the conviction is not sustainable in certain respects because vital evidence has been overlooked or has not been given due consideration. In *Pranab Kumar Mitra* v. *State of West Bengal*[5], the Supreme Court makes it clear that in the absence of statutory provisions in terms applying to an application in revision like those in section 431 in respect of criminal appeals the High Court has power to pass such orders as it may deem fit and proper in the exercise of its revisional jurisdiction under section 439 ; that it is to be exercised in aid of justice; that the High Court is not bound to entertain an application in revision, or having entertained one, to order substitution in every case or to treat a pending application as having abated by reason of the fact that there was a composite sentence of imprisonment and fine ; that the High Court has full discretion to deal with a pending matter at the time of the death of the petitioner ; that whether it is the accused or the complainant who has moved the High Court in revision, if the High Court has issued a rule that rule must be heard and determined irrespective of whether the petitioner is alive or dead or whether he is or is not represented by a legal practitioner; that in so hearing and determining the High Court is discharging its statutory function of supervising the administration of justice, and hence the considerations applying to the abatement of appeals may not apply in the case of revisional applications ; that in the case of a convicted person though by reason of his death the question of serving the whole or any part of the sentence cannot arise the sentence itself still remains to be examined which cannot be done unless the order of conviction is examined on its merits, and that the High Court has power in such cases to look into the whole question of the correctness, propriety, or legality of the sentence which necessarily involves examining the very order of conviction from that point of view. *Kasi Thevar* v. *Chinniah Konar*[6], states that the conditions necessary for the application of section 479-A are that the Court before it delivers judgment or at the time of doing so must form the opinion that a witness is giving false evidence, that the Court must come to such a conclusion on materials placed before it, and that section 479-A (6) cannot apply to a case where it was only after the judgment was delivered that the necessary documents that would establish the falsity of the witness were obtained and brought

1. (1959) 2 M.L.J. (S.C.) 121.
2. (1959) 2 M.L.J. 61.
3. (1959) 2 M.L.J. 521 (F.B.).
4. (1959) 2 M.L.J. 463.
5. (1959) 1 M.L.J. (S.C.) 166.
6. (1959) 2 M.L.J. 534.

to the notice of the Court in the petition filed. *Balakrishna Menon* v. *Govinda Krishnan*[1] takes the view that before it can be said that the respondent in a petition under section 488 is wilfully avoiding service or neglecting to attend Court within the meaning of sub-section (6) proviso so as to justify the Magistrate's proceeding *ex parte* the summons must in the case of a Government servant have been personally served on him as required by sections 69 and 70, that it is not sufficient to show that the respondent had knowledge of the summons having been received in the office in which he is employed, and that in such a case the Magistrate is not justified in proceeding *ex parte* and passing an *ex parte* order.

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1. (1959) 1 M.L.J. 146.